



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

ELECTRONIC EMAIL
CONFIRMATION OF EMAIL RECEIPT REQUESTED

Mr. Robert Wood
Operations Chief Safety Officer
Norfolk Southern Railway Company
1200 Peachtree Street NE
Atlanta, Georgia 30309
robert.wood2@nscorp.com

Re: Information Request under Sections 308 and 311 of the Clean Water Act
Discharge from a Train Derailment located at Norfolk Southern Mile Post 29G
Houston County, Georgia, on or about October 9, 2019
NRC No.: 1260693

Dear Mr. Wood:

This letter is to request that Norfolk Southern Railway Company (Respondent) respond to the enclosed Information Request. The Federal Clean Water Act (CWA), 33 U.S.C. §§ 1251-1387, prohibits the discharge of oil or hazardous substances into waters of the United States or adjoining shorelines in such quantities as may be harmful. The U.S. Environmental Protection Agency's regulations at 40 C.F.R. Part 110 explain that, among other things, a discharge of oil that causes a film, sheen, discoloration, sludge or emulsion or violates applicable water quality standards is considered to be in a quantity that may be harmful. In addition, the EPA's regulations at 40 C.F.R. Parts 116 and 117 designate hazardous substances under Section 311(b)(2)(A) of the CWA, and the reportable quantities of such hazardous substances that when discharged are considered to be in quantities that may be harmful. Each discharge of oil or hazardous substances into waters of the United States in a quantity that may be harmful constitutes a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

The EPA has information suggesting that the discharge event referenced in the subject above and associated with the National Response Center Number 1260693 may have been a violation of the CWA. Sections 308(a) and 311(m) of the CWA, 33 U.S.C. §§ 1318(a) and 1321(m), authorize the EPA to require any person to provide information needed to determine whether there has been a violation of the CWA. Accordingly, the EPA requests that the Respondent respond to the inquiries in the Information Request (Enclosure 1) within thirty (30) calendar days of your receipt of this letter.

The Respondent should answer each question in the enclosed Information Request as clearly and completely as possible. The Respondent's response to this Information Request must be accompanied by the Statement of Certification (Enclosure 2) and signed and dated by you or the person who is authorized by the Respondent to respond to the request. The signed Certification Statement certifies, among other things, that the response to the Information Request is complete and contains all information and documentation available to the Respondent pursuant to the request.

Please submit the written response via email or regular mail within thirty (30) calendar days of receipt of this letter to:

Mr. William Joyner
Enforcement and Compliance Assurance Division
Water Enforcement Branch
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
Joyner.william@epa.gov

Although the information requested must be submitted to the EPA, the Respondent is entitled to assert a business confidentiality claim pursuant to the regulations set forth in 40 C.F.R. § 2.203, covering part or all of the information, by clearly identifying it as “confidential” using a cover sheet, stamped or typed legend or other suitable form of notice employing language such as trade secret, proprietary or company confidential. The Respondent should clearly mark as “confidential” any parts of otherwise non-confidential documents and may submit them separately to help the EPA handle and identify them. Unless a confidentiality claim accompanies the information when it is received by the EPA, the information may be made available to the public without further notice to the Respondent.

Compliance with this letter is mandatory. If the Respondent does not respond fully and truthfully to this Information Request or adequately justify the failure to do so, the Respondent may be subject to civil penalties or criminal fines under Section 309 of the CWA, 33 U.S.C. § 1319. This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

The EPA appreciates your prompt attention to this matter. If you would like an opportunity to confer, or if you have any questions relating to this request for information, please contact William Joyner at (404) 562-8795, joyner.william@epa.gov. For legal questions please contact Stephen P. Smith, Associate Regional Counsel, at (404) 562-9554, smith.stephen@epa.gov. Thank you for your cooperation in this matter.

Sincerely,

Jairo Castillo, P.E., Chief
Wastewater Enforcement Section
Enforcement and Compliance Assurance Division

Enclosures

ENCLOSURE 1

CLEAN WATER ACT SECTION 308/311 LETTER INFORMATION REQUIRED FOR DISCHARGE EVENTS

I. INSTRUCTIONS

1. Identify the person(s) answering these questions on behalf of Respondent, including the person's full name, business mailing address, business telephone number, and relationship to Respondent.
2. Please provide a separate narrative response for each occurrence of a discharge and to each and every Question and subpart of a Question set forth in this Information Request.
3. Precede each answer with the number of the Question to which it corresponds.
4. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to the EPA. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify the EPA of this fact as soon as possible and provide the EPA with a corrected response.
5. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it responds. You may be asked to produce some documents in hard copy and electronically.

II. DEFINITIONS

The following definitions shall apply to the following words as they appear in this Information Request:

1. The term "CWA" refers to the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, also known as the Clean Water Act.
2. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.
3. The term "discharge" has the same definition as that contained in Section 311(a) of the CWA, and includes any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.
4. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, cancelled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intra office communications, photostatic or other copy of any documents, microfilm or other film record, any photograph (in color), sound recording on any type of device, any punch card, disc or disc pack; any tape or other type of memory generally associated

with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory and together with printouts of such punch card, disc, or disc pack, tape or other type of memory); and (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation or the like on it, (c) drafts, (d) attachments to or enclosures with any document, and (e) every document referred to in any other document. You may be asked to produce some documents in hard copy and electronically.

5. The term “hazardous substance” shall have the same definition as that contained in Section 311(b)(2) of the CWA, and includes any mixtures of such hazardous substances with any other substances.
6. The term “identify” means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
7. The term “identify” means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full legal name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
8. The term “identify” means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressee and/or recipient, and the substance or the subject matter.
9. The term “oil” shall have the same definition as that contained in Section 311(a)(1) of the CWA, and includes any mixtures of such oil with any other substances.
10. The term “owner or operator” shall have the same definition as that contained in Section 311(a) of the CWA, and includes any person owning or operating an onshore Facility.
11. The term “person” shall have the same definition as that contained in Sections 311(a) and 502 of the CWA: an individual, firm, corporation, association, partnership, State, municipality, commission, or political subdivision of a State, or any interstate body.
12. Where applicable, diagrams of the discharge location and copies of maps of the area may be used to explain the answers to the questions.
13. Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions.
14. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the CWA or regulations, in which case the statutory or regulatory definitions shall apply.

III. REQUESTED INFORMATION

Please provide the following information with respect to the discharge of oil and/or hazardous substances from the train derailment that occurred at Norfolk Southern Mile Post 29G, Houston County, Georgia, on or about October 9, 2019 (the “Facility”) (NRC Number 260693). When the term “you” or “Respondent” is used, it shall mean Norfolk Southern Railway Company, and includes any officers, managers, employees, contractors, trustees, partners, successors, assigns, and agents of the business.

1. State the full and correct legal name of each owner and operator of the Facility and train involved in the derailment. If the owner(s) and operator(s) are separate entities; identify both in your response. For each owner and operator you identify, provide the following information:
 - (a) State whether the owner and operator is an individual, a firm, a corporation, a limited liability company, an association, a partnership, a sole proprietorship, a trust, or if the owner and operator is a different business entity, identify the type of entity.
 - (b) State the name of the State or Commonwealth in which the owner and operator was organized and state whether the Respondent is registered to do business in the state where the discharge of oil and/or hazardous substance occurred.
 - (c) If the owner or operator identified is registered or is doing business under an alternative trade name(s) (DBA), state the alternative trade name(s).
 - (d) State the name and mailing address of the President and/or registered agent of each owner and operator.
 - (e) Give a brief description of the business conducted by each owner and operator.
2. Identify the oil and/or hazardous substance discharged at/from the Facility. Provide the following information and produce the documents requested concerning that discharge:
 - (a) If the discharged substance was or contained a hazardous substance, provide the Material Data Safety Sheet (MSDS) for the hazardous substance.
 - (b) If the discharge was a mixture of oil and hazardous substances, state the approximate percentages of the oil and hazardous substance.
 - (c) If it is your position that the substance that was discharged from the Facility is not an oil or hazardous substance, describe the substance discharged and explain why the substance is not an oil or hazardous substance.
3. State the total volume of oil and/or hazardous substances that was discharged from the Facility, which includes the volume of oil and/or hazardous substances that did and did not enter a water body. Provide the following information and produce the requested documents concerning this discharge:
 - (a) Identify all assumptions that were made in calculating the total volume of oil or hazardous substances discharged at/from the Facility.

- (b) Produce all documents showing how you calculated the amount of the discharge, including, but not limited to, all initial and subsequent estimates and all mathematical calculations made by you or someone on your behalf or at your direction.
4. State the total volume of the oil and/or hazardous substances that was discharged at/from the Facility that entered a water body (river, stream, lake, pond, impoundment, wetland, drainage ditch, sewer, storm drain, swale, arroyo, etc.), including a waterway that may have been dry at the time of the discharge. Provide the following information and produce the documents requested concerning this discharge:
 - (a) Identify the water body (river, stream, lake, pond, impoundment, wetland, drainage ditch, sewer, storm drain, swale, arroyo, etc.), that received the discharge, including any water body that may have been dry at the time of the discharge.
 - (b) For the water body identified in response to 4(a), identify its downstream receiving waters.
 - (c) Identify all assumptions that were made in calculating the total amount of this discharge to the water body.
 - (d) Produce all documents showing how you calculated the amount of oil or hazardous substance discharged to the water body, including, but not limited to, all initial and subsequent estimates and all mathematical calculations made by you or someone on your behalf or at your direction.
 5. For the discharges at/from the Facility that entered a water body, identify each person known to you, including persons not employed by you, who either reportedly saw or who made a determination that a film, sheen, sludge, or emulsion was on or in any waterway. For each person identified, provide the following information:
 - (a) Identify the waterways on which the film, sheen, sludge, or emulsion was seen.
 - (b) State the date and time on which each person saw the film, sheen, sludge, or emulsion on each water body.
 - (c) State his/her title, business affiliation, address, and telephone numbers.
 6. Describe the location where the oil and/or hazardous substances discharged into the water body using longitude and latitude and/or metes and bounds.
 7. Produce a USGS 7.5-minute topographic map of the area where the discharge occurred, and post on the map the location where the discharge commenced and the maximum extent of the discharge, known as the “reach”. If it is not possible on the map to show the discharge point and the reach of the spill, only show the discharge point on the map. Produce another map on a larger scale on which you have posted the discharge point and the reach of the discharge.
 8. Describe the cleanup activities you took as a result of the discharge of oil and/or hazardous substances at/from the Facility.

9. Produce in hard copy and electronically (in color), all photographs, drawings, reports, charts or other documents that are in your possession relating to the discharge of oil and/or hazardous substances at/from the Facility, including, but not limited to:
 - (a) The Facility;
 - (b) The path of the discharge at/from the Facility to a water body;
 - (c) The water bodies and the soils impacted;
 - (d) All cleanup activities conducted; and
 - (e) All fish, birds, or other species seen in the area around and adjoining the area where the discharge occurred.

Please send electronic copies to the email address of the EPA contact identified in the letter transmitting this Information Request.

8. To your knowledge, do other persons have copies of photographs, drawings, or charts relating to the discharge at/from the Facility that the EPA has requested you to produce in response to Question 7? If the answer is yes, identify all persons, including each person's title, company affiliation, address, and telephone number.
9. State the total costs that the Respondent incurred in conducting the cleanup activities. If you do not know the total final costs, state when you expect to know the final costs, and provide an estimate of the total costs expected to be incurred.
10. State the volume of soil and and/or water removed from the spill site, including the soil and water bodies as part of the cleanup efforts the Respondent conducted.
11. Has the Respondent received a notice of violation and/or penalty assessment, letter, or had verbal communication with a federal, state, or local authority indicating that a penalty may be assessed against it as a result of the discharge at/from the Facility? If the answer is yes, provide the following information and produce the documents requested concerning the discharge:
 - (a) Produce all documents you have received from, or you have sent to, the federal, state, or local authority, including, but not limited to, documentation showing the amount of any penalty assessed, the amount of penalty the Respondent has paid, and settlement agreements.
 - (b) Identify each person who spoke with the federal, state, or local authority on your behalf and the person speaking on behalf of the federal, state, or local authority. State the title, address, business affiliation, and telephone numbers of each person identified.
12. Provide a list of all property, casualty and/or liability insurance policies, and any other insurance contracts (including, but not limited to, Environmental Impairment Liability, Pollution Legal Liability, Cleanup Cost Cap or Stop Loss Policies, Institutional Controls and Post Remediation Care Insurance) that provided coverage for the discharge at/from the Facility and were in effect at the time of discharge. Include, without limitation, all primary, excess, and umbrella policies, and provide per occurrence policy limits for each policy. For each company identified, produce a copy of all claims

or other documentation that you have submitted to each insurer for reimbursement or payment regarding the discharge at/from the Facility, including amount of product lost and the estimated value of the product lost.

13. Identify any local, state, or federal authorities, including the Department of Transportation's Federal Railway Administration, and the National Transportation Safety Board or private parties that responded to the derailment or are investigating the derailment. Produce a copy of all accident reports or any other documents that been prepared as a result of the response to the derailment or as part of the investigation of the derailment that are in your possession. If any investigation of the derailment is still ongoing, explain the status of the investigation to your knowledge and when the investigation is expected to be completed, and identify the name of the person who may be contacted concerning the investigation.
14. For those discharges that entered a water body, identify all persons known to you, other than federal, state, and local authorities, who witnessed the discharge, were present after the discharge, and/or were present during the cleanup activities, including persons not employed by you. It is not necessary for you to identify any of the employees of the company that is conducting or conducted the cleanup activities. For each person identified, provide the following information:
 - (a) State the title, address, business affiliation, and telephone numbers of each person identified;
 - (b) Produce any documents in your possession that refer to, reflect, or evidence what each person identified in response to question 14 observed.
15. Answer the following questions about the discharge of oil and/or hazardous substances at/from the Facility:
 - (a) Explain why the discharge occurred and how it occurred.
 - (b) Identify the person who first became aware of the discharge and state the date and time on which that person became aware of the discharge.
 - (c) Explain how the person identified in your response to 15(b) became aware of the discharge.
 - (d) Identify the representative of the Respondent who is responsible for reporting the discharge to the National Response Center.
 - (e) Identify the person who first reported the discharge to the individual identified in response to question 15(d). State the date and time on which that person you have identified in response to this question 15(e) notified the individual identified in response to question 15(d).
 - (f) State the date and time on which the Respondent first began conducting cleanup activities in response to the discharge.
 - (g) State the date and time on which all of the cleanup efforts were completed by the Respondent. If the removal and/or remediation efforts have not been completed, state the approximate date on which you expect them to be completed.

- (h) Were any fish, birds, turtles, or other aquatic species found dead or in distress in the area where the discharge occurred? If your answer is yes, identify all fish, birds, or other species that were found dead or in distress, the number found dead or distressed, and produce all documents, documents or photographs (in color) in hard copy and electronically that refer to, reflect, or evidence the fish, birds, turtles, or other aquatic species found dead or in distress. Send electronic copies to the email address of the EPA contact identified in the letter transmitting this Information Request.
17. Identify all federal, state, and local authorities that responded to or investigated the discharge at/from the Facility. Identify all documents that were given to you by those authorities, including, but not limited to, reports, fines, tickets, photographs, and produce a copy of each. Produce a copy of the photographs (in color) in hard copy and electronically. Send electronic copies to the email address of the EPA contact identified in the letter transmitting this Information Request. If any of the documents you identified are not in your possession, identify all persons known to you that have copies of these documents.
18. Identify all persons known to you that have investigated the discharge at/from the Facility, either on your behalf or independently, and who are not identified in response to question 17. Identify all documents that were given to you by each person and produce a copy of each document.
19. Review Enclosure 2 and have your representative sign and return it to the EPA with your response to this Information Request.
20. State any other information about the discharge at/from the Facility that you would like to bring to the attention of the EPA.

ENCLOSURE 2
STATEMENT OF CERTIFICATION

I certify that the foregoing responses and information submitted were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By: _____
(Signature)

(Name)

(Title)

(Respondent)

(Date)